

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ALLVOI, INC. AND WDT, INC.

v.

SWIFT N SIMPLE, LLC d/b/a
ALLVOI.NET

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CIV.ACT.NO. _____

COMPLAINT

This is an action by Allvoi, Inc. (“ALLVOI”) arising from infringement of ALLVOI’s trademarks by Swift N Simple, LLC d/b/a Allvoi.net (“SWIFT N SIMPLE”). ALLVOI offers unlimited national and worldwide discounted long distance services. It has a website, www.allvoi.com. SWIFT N SIMPLE operates a website (www.allvoi.net) that offers discount long distance calls to India. ALLVOI registered its service mark “ALLVOI” on August 22, 2008. Despite ALLVOI’s demand that SWIFT N SIMPLE cease and desist from continuing to use the ALLVOI service mark, SWIFT N SIMPLE has ignored ALLVOI demands and ALLVOI’s rights under federal trademark law, the Lanham Act, and engaged in unfair and illegal competition. ALLVOI seeks damages, an accounting, the imposition of a constructive trust upon SWIFT N SIMPLE’s illegal profits, and injunctive relief.

I.

JURISDICTION

1. This Court has subject matter jurisdiction over ALLVOI’s claims for trademark infringement and related claims pursuant to 15 U.S.C. §1121 and 28 U.S.C. §1331 and 28 U.S.C. §1337, and 28 U.S.C. §1367.

2. This Court has supplemental jurisdiction over ALLVOI's claims arising under Texas state law pursuant to 28 U.S.C. §1367 because these claims are so related to ALLVOI's claims under federal law that they form part of the same case or controversy and drive from a common nucleus of operative facts.

II.

VENUE

3. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b) because SWIFT N SIMPLE is a resident of Dallas County and therefore a resident of the Northern District of Texas.

IV.

FACTS

4. ALLVOI offers discount nationwide and long distance telephone services to its customers. WDT is an acronym for World Discount Telecommunications, which has a long time presence in the voice over internet protocol long distance market. Although ALLVOI and WDT are separate entities, they share common ownership. To a certain extent, WDT and ALLVOI jointly market each other's services. Specifically, ALLVOI's website, www.allvoi.com, informs visitors and customers that ALLVOI is "Powered by WDT." A screen shot of the home page www.allvoi.com is attached as Exhibit A. By utilizing WDT's recognition in the marketplace, ALLVOI initially gained immediate recognition as a stable, reliable provider. ALLVOI's success has led to the advancement of both ALLVOI's and WDT's brand and reputation in the marketplace.

5. ALLVOI has used the ALLVOI service mark continuously since June 1, 2007. On August 22, 2008 ALLVOI filed for registration of the "ALLVOI" service mark with the

United States Patent and Trademark Office, and on March 10, 2009, the USPTO granted ALLVOI's application (Reg. No. 3,587,026, a copy of the registration is attached as Exhibit B).

6. ALLVOI and WDT have spent substantial time and money to create and develop the ALLVOI and WDT brands. They enjoy established reputations of providing reliable, dependable world wide long distance telephone service to its customers, and a long term presence in the industry.

7. In June 2012, ALLVOI and WDT discovered another website, www.allvoi.net, that also offers discounted long distance telephone services to the public. A screen shot of www.allvoi.net is attached as Exhibit C. WDT and ALLVOI have determined that www.allvoi.net is owned and operated by SWIFT N SIMPLE. According to SWIFT N SIMPLE's website, it offers discount long distance services to India. Also according to SWIFT N SIMPLE's website, it is powered by "WWDT." There is no connection whatsoever between ALLVOI and WDT on the one hand, and SWIFT N SIMPLE on the other hand.

8. ALLVOI and WDT demanded that SWIFT N SIMPLE take down www.allvoi.net and immediately cease and desist from using ALLVOI's registered mark or implying in any way that SWIFT N SIMPLE is somehow connected to WDT. SWIFT N SIMPLE neither responded to ALLVOI's and WDT's demand, nor complied with the demand. The website, www.allvoi.net, remains up and running on the World Wide Web with the confusing designation "Powered by WWDT."

9. SWIFT N SIMPLE's conduct constitutes trademark infringement and violations of the Lanham Act and Texas law.

10. SWIFT N SIMPLE's website is clearly inferior to ALLVOI's website. However, ALLVOI and WDT have been harmed by SWIFT N SIMPLE's conduct because ALLVOI and

WDT's reputation in the market is being diluted by SWIFT N SIMPLE's wrongful use of the ALLVOI mark and intentionally confusing WWDT designation on www.allvoi.net.

11. WDT and ALLVOI's damages also are compounded by SWIFT N SIMPLE's conduct because a simple Google search of "allvoi" will return ALLVOI's legitimate website as the first search result, and SWIFT N SIMPLE's phony website as the third search result. Both websites purport to offer long distance telephone services. The potential for confusion is obvious.

First Claim—Trademark Infringement [15 U.S.C. §1114]

12. ALLVOI repeats and incorporates the preceding paragraphs.

13. SWIFT N SIMPLE's activities constitute infringement of ALLVOI's federally registered trademark in violation of the Lanham Trademark Act, including but not limited to 15 U.S.C. §1114(1)

14. Because ALLVOI markets and distributes its services to the public through its ALLVOI mark and website, its service mark is the means by which ALLVOI distinguishes itself and the services it offers from others in the same or related fields.

15. ALLVOI's mark has come to mean, and be understood by the consuming public, to signify the actual services offered by ALLVOI.

16. SWIFT N SIMPLE's intentional misuse of ALLVOI's service mark has and will continue to cause confusion, mistake, or deception as to the source, origin, or authenticity of the services.

17. SWIFT N SIMPLE's conduct is likely to lead the public to conclude, incorrectly, that the infringing materials used by SWIFT N SIMPLE to market its services originate with or are authorized by ALLVOI or WDT, to the damage and harm of ALLVOI and WDT.

18. Upon information and belief SWIFT N SIMPLE intentionally used the infringing material with the purpose of misleading or confusing customers and the public as to the origin and authenticity of the services offered by SWIFT N SIMPLE.

19. At a minimum, SWIFT N SIMPLE acted with willful blindness to and in reckless disregard of ALLVOI's registered mark.

20. SWIFT N SIMPLE is liable to ALLVOI for trademark infringement. ALLVOI has suffered damages. ALLVOI is entitled to recover damages, which include any and all profits SWIFT N SIMPLE has made as a result of its wrongful conduct.

21. In addition, SWIFT N SIMPLE's willful conduct justifies the award of treble damages pursuant to 15 U.S.C. §1117(b). Alternatively, ALLVOI is entitled to statutory damages under 15 U.S.C. §1117(c).

22. ALLVOI also is entitled to injunctive relief under 15 U.S.C. 1116(a) and an order compelling the impounding of all infringing materials being used to market SWIFT N SIMPLE's services. ALLVOI has no adequate remedy at law for SWIFT N SIMPLE's wrongful conduct because, among other things, (a) ALLVOI's mark is a unique and valuable property that has no readily determinable market value; (b) SWIFT N SIMPLE's conduct constitutes harm to ALLVOI's property such that ALLVOI could not be made whole by a monetary award; (c) if SWIFT N SIMPLE's conduct is allowed to continue, the public is likely to become further confused, mistaken, or deceived as to the source, origin or authenticity of SWIFT N SIMPLE's services; and (d) SWIFT N SIMPLE's wrongful conduct, and the resulting damages to ALLVOI, is continuing.

23. ALLVOI is entitled to recover its attorney fees pursuant to 15 U.S.C. §1117.

Second Claim—False Designation of Origin, False Description, Dilution

24. ALLVOI and WDT incorporate the foregoing paragraphs.

25. Because ALLVOI and WDT advertise and market their services under the ALLVOI and WDT mark, these trademarks and service mark are the means by which ALLVOI and WDT distinguish their services from others in the same field or related fields.

26. Because of ALLVOI's and WDT's long, continuous, exclusive, and established use of the ALLVOI mark and WDT designation, these marks have come to mean, and are understood by customers, and users, and the public to signify services of ALLVOI and WDT.

27. SWIFT N SIMPLE's wrongful conduct includes the use of ALLVOI's mark and the false designation that its services are powered by WWDT in connection its services.

28. Upon information and belief, SWIFT N SIMPLE engaged in such wrongful conduct with the willful purpose of misleading or confusing customers and the public as to the origin and authenticity of the services offered, marketed or distributed in connection with SWIFT N SIMPLE's use of ALLVOI's mark and the misleading reference to WWDT on its website, and of trading upon ALLVOI's and WDT's goodwill and business reputation. SWIFT N SIMPLE's conduct constitutes (a) false designation of origin, (b) false or misleading description, and (c) false or misleading representation that the imitation visual images originate from or are authorized by ALLVOI and WDT, all in violation of § 43(a) of the Lanham Trademark Act, set forth at 15 U.S.C. § 1125(a).

29. SWIFT N SIMPLE's wrongful conduct is likely to continue unless restrained and enjoined.

30. As a result of SWIFT N SIMPLE's wrongful conduct, ALLVOI and WDT have suffered and will continue to suffer damages. ALLVOI and WDT are entitled to injunctive relief

and to an order compelling the impounding of all imitation marks and false designations being used, offered, advertised, marketed, installed, or distributed by SWIFT N SIMPLE. ALLVOI and WDT have no adequate remedy at law for SWIFT N SIMPLE's wrongful conduct because, among other things, (a) ALLVOI's and WDT's mark are unique and valuable property which have no readily-determinable market value, (b) SWIFT N SIMPLE's advertising and marketing constitutes harm to ALLVOI and WDT such that ALLVOI and WDT could not be made whole by any monetary award, and (c) SWIFT N SIMPLE's wrongful conduct, and the resulting damage to ALLVOI and WDT, is continuing.

Third Claim [Texas Common Law Unfair Competition]

31. ALLVOI and WDT reallege the foregoing paragraphs.

32. The acts and conduct of SWIFT N SIMPLE as alleged above in this complaint constitute unfair competition pursuant to the common law of the State of Texas.

33. SWIFT N SIMPLE's acts and conduct as alleged above have damaged and will continue to damage ALLVOI and WDT and have resulted in an illicit gain of profit to SWIFT N SIMPLE in an amount that is unknown at the present time.

Fourth Claim [For Imposition of a Constructive Trust Upon Illegal Profits]

34. ALLVOI and WDT reallege the foregoing paragraphs.

35. SWIFT N SIMPLE's conduct constitutes deceptive and wrongful conduct in the nature of passing off its services as the services of ALLVOI and WDT, or that SWIFT N SIMPLE's services have been approved or authorized by ALLVOI.

36. By virtue of SWIFT N SIMPLE's wrongful conduct, SWIFT N SIMPLE has illegally received money and profits that rightfully belong to ALLVOI and WDT.

37. Upon information and belief, SWIFT N SIMPLE holds the illegally received money and profits in the form of bank accounts, real property, or personal property that can be located and traced.

38. SWIFT N SIMPLE holds the money and profits it has illegally received as constructive trustee for the benefit of ALLVOI and WDT.

Fifth Claim [Accounting]

39. ALLVOI and WDT incorporate the preceding paragraphs.

40. ALLVOI is entitled, pursuant to 15 U.S.C. § 1117, to recover any and all profits of SWIFT N SIMPLE that are attributable to the acts of infringement.

41. ALLVOI is entitled, pursuant to 15 U.S.C. § 1117, to actual damages or statutory damages sustained by virtue of SWIFT N SIMPLE's acts of infringement.

42. The amount of money due from SWIFT N SIMPLE to ALLVOI is unknown to ALLVOI and cannot be ascertained without a detailed accounting by SWIFT N SIMPLE of the profits attributable to SWIFT N SIMPLE's website, www.allvoi.net.

V.

JURY DEMAND

43. Plaintiffs demand a jury.

VI.

PRAYER FOR RELIEF

WHEREFORE, ALLVOI and WDT respectfully request judgment as follows:

44. That the Court enter a judgment against SWIFT N SIMPLE as indicated below:

- a. that SWIFT N SIMPLE has willfully infringed ALLVOI's rights in the following federally registered trademark, 3,587,026;
- b. that SWIFT N SIMPLE have committed and are committing acts of false designation of origin, false or misleading description of fact, and false or

misleading representation against ALLVOI and WDT, in violation of 15 U.S.C. § 1125(a);

- c. that SWIFT N SIMPLE have engaged in unfair competition in violation of Texas common law;
- d. That the Court issue injunctive relief against SWIFT N SIMPLE, and that SWIFT N SIMPLE, their directors, principals, officers, agents, representatives, servants, employees, attorneys, successors and assigns, and all others in active concert or participation with SWIFT N SIMPLE, be enjoined and restrained from:
 - i. using in any way the domain www.allvoi.net;
 - ii. identifying itself or its services as “powered by WWDT” or otherwise connected with WDT or ALLVOI.
 - iii. using any false designation of origin or false or misleading representation that can or is likely to lead the trade or public or individuals erroneously to believe that they are doing business with WDT or ALLVOI, or that any services offered by SWIFT N SIMPLE are licensed, sponsored, approved, or authorized by or for WDT or ALLVOI, when such is not true in fact;
 - iv. engaging in any other activity constituting an infringement of any of ALLVOI’s trademarks, service mark and/or copyrights, or of ALLVOI’s rights in, or right to use or to exploit, these trademarks, service mark, and/or copyrights; and
 - v. assisting, aiding, or abetting any other person or business entity in engaging in or performing any of the activities referred to in subparagraphs (a) through (e) above.
- e. That the Court enter an order declaring that SWIFT N SIMPLE hold in trust, as constructive trustees for the benefit of ALLVOI, all illegal profits obtained from SWIFT N SIMPLE’s infringing and misleading conduct, and requiring SWIFT N SIMPLE to provide ALLVOI a full and complete accounting of all amounts due and owing to ALLVOI as a result of SWIFT N SIMPLE’ illegal activities.
- f. That the Court order SWIFT N SIMPLE to pay ALLVOI’s general, special, actual, and statutory damages as follows:
 - i. ALLVOI’s damages and SWIFT N SIMPLE’ profits pursuant to 17 U.S.C. § 504(b), or alternatively, enhanced statutory damages pursuant to 17 U.S.C. § 504(c), and 17 U.S.C. § 504(c)(2), for SWIFT N SIMPLE’ willful infringement of ALLVOI’s copyrights;

- ii. ALLVOI's damages and SWIFT N SIMPLE' profits pursuant to 15 U.S.C. § 1117(a), trebled pursuant to 15 U.S.C. § 1117(b) for SWIFT N SIMPLE' willful violation of ALLVOI's registered trademarks and service mark, or in the alternative, statutory damages pursuant to 15 U.S.C. § 1117(c) for each counterfeit mark; and
- iii. ALLVOI's damages and SWIFT N SIMPLE' profits pursuant to Texas common law.
- iv. That the Court order SWIFT N SIMPLE to pay ALLVOI and WDT both the costs of this action and the reasonable attorneys' fees incurred by it in prosecuting this action; and
- g. That the Court grant to ALLVOI and WDT such other and additional relief as is just and proper.

Respectfully Submitted,

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